**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO. 90/1999**
**AND**
**CIVIL REVISION APPLICATION NO. 220/2002**

**FIRST APPEAL NO. 90/1999**

1. State of Goa through
   Special Land Acquisition Officer
   (North), Mapusa, Goa.
2. Executive Engineer,
   Works Division VI,
   Irrigation Department, Colvale Road,
   Bardez, Goa. ..... Appellants.

V/s.

Smt. Prisca Fernandes e Ferrao,
327 Moddlo Waddo,
Assonora, Bardez, Goa. ..... Respondent.

Mr. S. Vahidulla, Addl. Govt. Advocate for the appellants.

Mr. Sudesh Usgaonkar, Advocate for the respondent.

**CIVIL REVISION APPLICATION NO. 220/2002**

Smt. Prisca Fernandes e Ferrao,
327 Moddlo Waddo,
Assonora, Bardez, Goa.
Represented by Power of aTtorney
Smt. Dominica C. Ferrao,
r/o. Assonora, Goa. ..... Applicant.

V/s.

1. State of Goa through
   Special Land Acquisition Officer
   (North), Mapusa, Goa.

2. Executive Engineer,
Works Division VI,
Irrigation Department, Colvale Road,
Bardez, Goa. ..... Respondents.

Mr. Sudesh Usgaonkar, Advocate for the applicant.

Mr. S. Vahidulla, Addl. Govt. Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 21ST SEPTEMBER, 2006.

ORAL JUDGMENT :

By this appeal, the appellants have challenged the order of the District Judge, Panaji, dated 7.6.1999 only partly allowing the reference under Section 18 of the Land Acquisition Act, fixing the market rate of the acquired land at the rate of Rs.14.40 per sq. metre besides statutory benefits which were awarded to the claimant. The civil revision application is filed on the ground that there was an error apparent in the calculation of the price while passing the award on the basis of the reasoning recorded by the reference Court.

2. The respondent-claimant filed a reference under Section 18 of the Land Acquisition Act as her land comprising survey No.189/0 of Village Mulgao of Bicholim Taluka consisting 8975 sq. metres came to be

acquired by the Notification under Section 4 of the Land Acquisition Act, ("the said Act", for short) published in the Gazette dated 7.11.991. The Land Acquisition Officer had fixed the market value of the acquired land at the rate of Rs.8/- per sq. metre for the purpose of payment of compensation. Being unsatisfied by the rate fixed, the reference came to be made under Section 18 of the said Act claiming that the proper rate of the suit land was Rs.30/- per sq. metre.

3. The District Judge, Panaji adjudicated the reference on the basis of the available evidence which was led by both the parties and came to the conclusion that the claimant had proved that the market price of the area acquired from the property as fixed by the Land Acquisition Officer was inadequate and proceeded to fix the market value at the rate of Rs.14.40 per sq. metre and denying the total claim of Rs.30/- per sq. metre. Accordingly, the reference was partly allowed. Hence, the present appeal on behalf of the State is filed. Similarly, the Civil Revision Application is filed on the ground that even on the basis of the reasoning adopted by the learned District Judge, the fair market price of the impugned land should have been calculated at Rs.28/- per sq. metre and, therefore, there is error apparent on record in calculating the market price.

4. I have heard the learned Counsel for both the parties. Perused the record. At the outset, it may be noted that the claimant has examined her attorney and an expert witness Architect Sanzgiri and also relied upon in all seven sale instances in support of her claim, out of which four of the sellers of the sale deeds were examined as witnesses. On the other hand, the respondent-State has examined the Asst. Engineer and relied on some documents which are on record.

It appears from the record that out of seven sale instances, the learned District Judge thought it fit to take into consideration only four sale instances as the sellers involved therein were examined as witnesses and discarded from consideration the remaining three sale deeds as there was no supporting evidence in that regard. The sale deed taken into consideration was Exhibit AW.1/F dated 8.8.1988 consisting of an area of 605.50 sq. metres, the land in which was sold at the rate of Rs.50/- per sq. metre, located at Mulgao and it was at a distance of about 650 metres. There were two sale instances, namely Exhibit AW.1/H and Exhibit AW.1/I which were executed on 7.2.90 and 26.4.91 respectively which were located at a distance of about 6 kms. from the acquired land of the claimant and, therefore, those were also not considered for the purpose of comparison. The remaining sale deed Exhibit AW.1/G dated 8.6.89 of 449 sq. metres' of land located at Village Mulgao comprising rate of Rs.40/- per

sq. metre and was located at a distance of about 800 metres from the claimant's land was approved by the learned trial Judge for comparison purpose as there was no other sale instance available for comparison.

On perusal of the Judgment of the lower Court, I have no doubt whatsoever that the learned District Judge has rightly relied upon the sale deed dated 8.6.89, Exhibit AW.1/G which could certainly be taken as an indicator for the purpose of assessing the fair market value of the acquired land. It is seen from the record that AW.1 Domnica Ferrao had admitted that the sale deeds Exhibit AW.1/E, Exhibit AW.1/F and Exhibit AW.1/G were part of the property under Exhibit AW.1/C. She also stated that the plot of the sale deed was located at a distance of about 650 metres from the acquired land and was of similar nature and could be compared with the impugned land in every respect. The learned District Judge, after discussing the entire evidence in detail, with regard to all the said four sale deeds has rightly concluded that it was the sale deed dated 8.6.89 which was comparable wherein the land was sold at the rate of Rs.40/- per sq. metre which was located at a distance of about 800 metres from the impugned land.

5. It is also seen from the evidence on record that the office of Irrigation Department, the Higher Secondary College, Bank were available

within a radius of 1 km. and, therefore it was obvious that the neighbourhood area was sufficiently developed and, therefore, it cannot be denied that the acquired land did have potential for development. This is especially so after considering the evidence regarding location of the suit property from Assonora – Dodamarg road and the distance from Assonora bridge which are indicators of building potentiality which was held suitable for proper development of the property. The finding, therefore, recorded by the learned District Judge, in this regard appears to be just and proper. Therefore, I do not see any reason not to concur with the same.

6. Coming back to the suitability and comparison of the sale instance dated 8.6.89 with the property involved in the dispute, it was urged by the learned Addl. Govt. Advocate appearing on behalf of the appellant that there could not be proper comparison between the properties involved as the suit property consisted of 8975 sq. metres, whereas the land under the sale instance consisted of 449 sq. metres and, therefore, it was submitted that no valid comparison could be made for the purpose of fixing the market price of the suit property. However, per contra, the learned Counsel for the respondent-claimant sought to place reliance on the Apex Court ruling in the case in the case of ***Ravinder Narain and anr. vs. Union of India.,*** (2003) 4 SCC 481, ratio of which is to the effect that the

rate fixed for similar plots in the same vicinity could, in fact, be the basis for fixation of the rate for large area acquired and there could not be any absolute prohibition. This is so when there was no other material on record to make any comparison and, therefore, it was open to the adjudicating Court to make comparison of the prices paid for small plots of land subject to necessary deductions/adjustments. In my considered view, this ratio laid down by the Apex Court aptly fits to the present case, especially when it is seen from the record that the learned District Judge has indeed taken into account this aspect and made necessary deductions/adjustments while coming finally to the conclusion that the said sale instance dated 8.6.89 was a proper indicator for fixing the market price of the acquired land.

7. The learned Addl. Govt. Advocate for the appellants submitted that the comparison between the sale instance dated 8.6.89 and the acquired land could not be made as there was evidence on record to show that the impugned land was designated under `orchard zone'. The learned District Judge while dealing with this aspect has recorded his finding to the effect. In support of this submission, the witness of the respondent had produced a letter dated 26.10.1998 issued by the Deputy Town Planner. However, it appears from the letter itself that the Town Planner only mentioned that as per zoning proposal, the acquired land was under

orchard zone. In fact, merely stating that such proposal was given would not be sufficient to come to the conclusion that the land itself was designated under any particular zone, especially in the absence of any supporting evidence in that regard. What the appellants should have done in this case, is to produce the official gazette which is a mandatory requirement before particular land is designated under a particular zone and, therefore, mere proposal for designating the impugned land under orchard zone would not be sufficient in the absence of any evidence to show that such a proposal was ever accepted and the suit property was included under orchard zone. Hence, I hold that this submission is devoid of any merit.

8. Therefore, in view of these aspects, I fully concur with the reasoning adopted and the findings recorded by the learned District Judge while coming to the conclusion that the market price of the acquired land should be based upon the sale instance which is used for comparison dated 8.6.89, Exhibit AW.1/G.

9. After recording his finding, the learned District Judge has further stated in his concluding part of the Judgment that it was safe to infer that when AW.5 sub-divided the plot “C” into further three plots, he

made provision for roads and for open spaces before selling the said plots. Likewise, if the claimant was to develop her property, she would also require to make provision for roads and for open spaces and on that count a deduction of about 30 % has got to be made. It was observed that the fair market value of the acquired land could, therefore, be assessed at Rs.12/- per sq. metre. However, the sale deed of the plot at Exhibit AW.1/G was of June, 1989 i.e. two years prior to the date of the notification under Section 4 of the said Act and, therefore, increase o f 10 % per year had to be taken into consideration and, therefore, it was held that further increase of the said price by Rs.2.40 was required to be added, which brought the fair market value of the acquired land at Rs.14.40. In this regard, the present respondent in his civil revision application has submitted that out of all 7 sale instances relied upon by the claimant, the reference Court came to the conclusion that the sale deed at Exhibit AW.1/G is comparable with the land acquired for various factors discussed in the Judgment. The consideration in the said sale deed was at the rate of Rs.40/- per sq. metre. It was a plot of developed land admeasuring 449 sq. metres at a distance of 800 metres from the main road. The Court, thereafter, held that since the land under consideration was an undeveloped, whereas the one under sale deed was developed into plots, deduction had to be made on that account of 30 %. Thereafter 30 % of Rs.40/- per sq. metre was correctly worked

out as Rs.12/- per sq. metre. But instead of deducting Rs.12/- from Rs.40/- and taking the difference as derived market value, Rs.12/- was directly taken as derived market value of the acquired land. On deduction of Rs.12/- from Rs.40/- per sq. metres, difference was Rs.28/- per sq. metre, which was in fact the market value to be arrived at after deduction of 30 % for cost of development. On this basis, it was urged that the proper market value even as per the reasoning given by the learned District Judge should be Rs. 28/- per sq. metre and not Rs.14.40 per sq. metre.

This was vehemently challenged on behalf of the appellants-State who have filed affidavit-in-reply raising various objections to such a calculation. However, so far as the main objection of comparison of sale instance dated 8.6.89 is concerned, we have already dealt with this aspect and I have concurred with the learned District Judge inspite of the fact that the suit land is larger in area, still it could be compared with the land involved in similar sale instance, which was smaller in area, especially when there was no other material on record for the purpose of comparison. Once we hold that the sale instance involving market rate of Rs.40/- per sq. metre as the indicator, then it is obvious that the learned District Judge has erred in marking arithmetical calculation and, therefore, I hold that even by the reasoning adopted by the learned District Judge, the fair market price of the land would be Rs.28/- per sq. metre to which the

claimant would be entitled to in this reference. Therefore, 10 % of Rs.28/- works out to Rs.2.8 % per year, for two years it is Rs.5.60, after adding the income to Rs.28/- which was the rate fixed, the market price would be Rs.33.60 per sq. meres.

8. In the result, the appeal stands dismissed with no order as to costs and the civil revision application is allowed in terms of the observations made hereinabove and stands disposed of with no order as to costs.

P.V. KAKAKDE, J.

ssm.